IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 6TH OCTOBER 2006 / 14TH ASWINA 1928

WP(C).No. 1287 of 2005(C)

PETITIONER:

VIPIN THARIAN, PADAPPAKKAL HOUSE,
ARUVAPPULAM P.O. PATHANAMTHITTA.

BY ADV. SRI.BABU CHERUKARA
SRI.BABU CHERUKARA
SRI.SAJI.K.JOHN

RESPONDENTS:

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1. THE MANAGER, ST.GEORGE HIGH SCHOOL,
OOTUPARA,OOTUPARA P.O. VIA, KONNI,
PATHANAMTHITTA DISTRICT.

2. THE DISTRICT EDUCATIONAL OFFICER,
PATHANAMTHITTA.

3. THE DEPUTY DIRECTOR OF EDUCATION,
PATHANAMTHITTA. OFFICE AT THIRUVALLA,
THIRUVALLA P.O.

BY ADV. SRI.BECHU KURIAN THOMAS
GOVERNMENT PLEADERSRI.T.T.MUHAMOOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/10/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (WP.1287/2005)

EXT.P1: PHOTOCOPY OF DEATH CERTIFICATE DT. 20/10/2004.

EXT.P2: DO. OF ENQUIRY REPORT DT. 15/11/2004.

EXT.P3: PHOTOCOPY OF APPLICATION SUBMITTED BY PETITIONER.

EXT.P4: PHOTOCOPY OF POSTAL COVER.

EXT.P5: PHOTOCOPY OF REPRESENTATION.

EXT.P6: PHOTOCOPY OF CERTIFICATE DT. 6/7/06 ISSUED BY VICAR.

A.K. Basheer, J.

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W.P(C) No. 1287 of 200

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Dated this the 6th day of October, 2006.

J U D G M E N T

Is the petitioner entitled to get appointment as a non-teaching staff in the school under the management of respondent No.1, as postulated under Rule 9A of Chapter XXIV-A, Kerala Education Rules?

2. A brief reference to the essential facts is necessary to consider the above question.

3. Petitioner's father P.J.Tharian had been working in the school under the management of respondent No.1 as a Peon eversince 1968. He died in harness on October 11, 2004. In fact, late Tharian, under normal circumstances, would have retired from service on superannuation on October 31, 2004. According to the petitioner, he is the eldest of the 3 children of late Tharian and he has got the requisite qualification to be appointed as a Full time Menial/Peon. Therefore he made a request to the Manager to appoint him as Peon/Full Time Menial in the school under the Dying in Harness Scheme. A true copy of the application submitted by the petitioner in the prescribed format on October 25, 2004 with copies of the requisite documents has been produced as Ext.P3. But the Manager did not accede to the request of the petitioner. It is in the above circumstances that petitioner has preferred this writ petition praying for issue of appropriate directions to the Manager as well as the Departmental Officers to give appointment to the petitioner.

In the counter affidavit it is contended by the Manager that late 'Tharian was not an employee of the school at the time of his death. According to the Manager, late Tharian had retired from service on October 3, 2004 and he passed away on October 11, 2004. Therefore the claim made by the petitioner for employment assistance under Rule 9A of Chapter XXIVA KER cannot be sustained. It is further contended that petitioner is "known to be employed" in the Kerala State Electricity Board. The vacancy of Peon which had arisen in the school consequent to the death of Sri.Tharian had been filled up by appointing M.Sujith Kunar who had assumed charge on October 12, 2004. In short, the Manager contends that petitioner is not entitled to get the protection of Rule 9A of Chapter XXIV-A KER.

5. Having heard learned counsel for the petitioner and the Manager and also the learned Government Pleader I am unable to accept the contentions raised by the Manager. In the counter affidavit filed by the Departmental officer it is categorically stated that late Tharian was working as a permanent staff in the school at the time of his death. In other words, late Tharian had died in harness. It is further stated that the enquiry conducted by the Village Officer had revealed that the family of late Tharian was in impecunious circumstances. Petitioner and the other family members of late Tharian were in great financial difficulties and all of them were depending on the income of late Tharian.

6. Learned Government Pleader submits that the Department is of the definite view that petitioner is entitled to get appointment under Rule 9A of Chapter XXIVA KER. Petitioner had produced all the

relevant documents along with his application. The other members of the family had given a letter of consent relinquishing their claim for appointment.

7. It is pertinent to note that the Manager had refused to receive the application sent by the petitioner in his address. The explanation given by the Manager is that the letter addressed to him would have been "perhaps returned unserved since he was out of station during those days". It is the further contention of the Manager that even if he had received the application, the situation would not have been different, since according to him, late Tharian had not died in harness. He had retired from service as a Peon.

8. The contention raised by the Manager that Tharian had retired from service on October 3, 2004 cannot be accepted because an employee is entitled to continue till the last day of the month, if his date of superannuation falls on any day in the course of the said month. That the Manager was bent upon frustrating the claim of the petitioner is evident from the fact that he had made an attempt to appoint one Sujith kumar as a Peon on the next day of the death of late Tharian. The contention of the Manager is that he had given appointment to Sujithkumar on October 12, 2004 . However the said appointment has not yet been approved by the Department, in my view justifiably. The Department had rejected the case of the Manager since the statutory claim made by the petitioner could not have been overlooked.

9. Similarly the contention of the Manager that he might have failed to receive the postal cover addressed to him containing the application of the petitioner because he "was perhaps out of station

during those days" is also liable to be repelled. In my view, all the circumstances indicate that the Manager wanted to deny the petitioner his statutory and legitimate claim for appointment under the dying in harness Scheme.

9. It is seen from the counter affidavit of the Departmental officers that the District Educational Officer, Pathanamthitta, respondent No.2 herein had in fact directed the Manager to appoint the petitioner as Peon/Full Time Menial. But the Manager had not complied with the above direction.

10. It is pertinent to note that the Manger does not have a case that the application submitted by the petitioner is defective in any respect; nor does he have a case that he had been directed by the Department to give appointment to the petitioner. He is statutorily bound to obey the directions of the Department. Though the Manger had contended that petitioner is working in the KSEB, no cogent or satisfactory material has been produced to substantiate this contention. Petitioner has vehemently denied the above contention. It is true that the Manager has attempted to press into service the photocopy of a pay slip allegedly issued by the KSEB. Even assuming that the petitioner had worked in the KSEB during the year 2005 as is attempted to be established through Ext.R1(a), there is nothing on record to show that he was a permanent employee in the Board. Further Ext.R1(a) was produced on the day when the case was posted for disposal. More importantly, there is nothing on record to show that the name indicated in the said document is that of the petitioner. In any view of the matter, I am not satisfied that any reliance can be placed on Ext.R1(a).

Petitioner's claim cannot be rejected on that ground.

In the above facts and circumstances the writ petition is allowed. The application submitted by the petitioner shall be received and processed and appropriate orders shall be passed in accordance with law. This shall be done as expeditiously as possible at any rate within one month from the date of receipt of a copy of this judgment. Respondent No.2 and 3 shall also ensure that the Manager complies with the statutory mandate contained in Rule 9A Chapter XXIVA KER and also the direction issued by the Department in this regard.

A.K. Basheer
Judge.

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